



TRANS, GENDER VARIANT & INTERSEX INMATES POLICY

CORRECTIONAL SERVICES

August 2016



INTRODUCTION

Policy Applicability

This policy applies to all entities operating within the framework of the Correctional Services, within the Corradino Correctional Facility (CCF).

Other entities that house inmates for purposes of rehabilitation that may not be obliged to follow this policy by the Correctional Services, for example, entities providing drug rehabilitation programmes are encouraged to develop their own corresponding policy.

Correctional Services commitment to the Respect for Human Rights and the Recognition of Inmate Diversity

The Correctional Services are fully committed to the respect for human rights, equality and inclusion, and the recognition of inmate diversity. Indeed, the Correctional Services actively promote and respect human rights, tackle inequalities, and value diversity and inclusion by taking action through a dynamic, systematic and evidence based approach.

The Principal Goals of the Correctional Services as an institution are:

- Keep prisoners in custody;
- Maintain order, control, discipline and a safe environment;
- Provide decent conditions for prisoners and meet their needs, including health needs;
- Provide positive regimes which help prisoners address their offending behaviour;
- Allow the prisoners as full and as responsible a life as possible; and
- Help prisoners prepare for their return to the community.

Every decision taken within a prison environment takes into account the safety and well-being of inmates and the Correctional Services recognise that in line with the above principles, they must not unlawfully discriminate against or harass any inmate in regard to any protected characteristic, including gender identity, gender expression and/or sex characteristics.

The Correctional Services will work hard to continue to develop as an organisation by implementing trans, gender variant and intersex inclusive policies and practices with a view to becoming a positive organisation vis-à-vis gender identity, gender expression and sex characteristics.

1.3 Purpose and Values of the Policy

The Trans, Gender Variant and Intersex Inmates Policy is developed within the context of:-

- Chapter IV of The Constitution of Malta
- The Universal Declaration of Human Rights
- The European Convention on Human Rights
- The Gender Identity, Gender Expression and Sex Characteristics Act (CAP 540)
- The Equality for Men and Women Act (CAP 456)
- The Prisons Act (CAP 260); and
- The Prison Regulations (S.L 260 03)

1.3.1 The purpose of this policy document is to:

- (a) Provide accurate and current information for all Correctional Services employees, including management, in relation to the equal treatment and human rights obligations regarding trans, gender variant and intersex inmates;
- (b) Outline the procedures to be followed by Correctional Services in the event of a trans, gender variant or intersex inmate being brought into CCF;
- (c) Enable all inmates to be treated fairly and without discrimination or harassment on grounds of gender identity, gender expression and/or sex characteristics; and
- (d) To facilitate compliance with international, European and national laws and public policies concerning data protection, bullying, harassment and discrimination.

1.3.2 This policy is based on the following values:

- (a) **Dignity and autonomy of the self:** Correctional Services should endeavour to foster a prison environment where trans, gender variant and intersex inmates are valued as all other human beings irrespective of their gender identity, gender expression and/or sex characteristics. Trans, gender variant and intersex inmates, should be able to live in a dignified manner, with full respect of their right to gender identity, physical autonomy and bodily integrity, free from discrimination, harassment, victimisation, bullying or violence whether emotional, physical and/or verbal.
- (b) **Equity:** Achieving justice and a quality rehabilitation experience for trans, gender variant and intersex inmates that acknowledges and seeks to address their particular needs and circumstances.

(c) **Social Justice:** Ensure that all inmates have equal chances of rehabilitation by fostering a safe environment for all those in custody and ensuring equal opportunity to learning, work and other privileges provided to inmates.

(d) **Diversity:** Correctional Services must endeavour to respect diversity that is inclusive of trans, gender variant and intersex inmates. Therefore, prisons must respect an inmate's right to own gender identity (regardless of whether it aligns with their biological sex or not), acknowledge the right to express one's gender expression, and recognise the full range of sex characteristics (beyond medical expectations of male and female bodies) as per prison regulations.

2. TERMINOLOGY

Additional gendered property in use refers to any property that may be used by trans and gender variant persons to align their appearance with their gender identity. Correctional Services do not classify any garments as belonging to either gender, and hence all inmates may have access to any additional gendered property in use for as long as such property in use is permitted in accordance with the Prison Regulations.

Gender refers to a socially constructed system of classification that ascribes qualities of masculinity and femininity to people. Gendered characteristics can change over time and are different between cultures and throughout history. Gender is often conflated with sex, but they are separate concepts as the first refers to a social construct while the second refers to the biological makeup.

Gender expression refers to each person's manifestation of their gender identity through behaviour, clothing, mannerisms, tonality of the voice, and other forms of expression that is socially ascribed to males and females; and/or the one that is perceived by others.

Gender identity refers to each person's internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance and/or functions by medical, surgical or other means) and other expressions of gender, including name, dress, speech and mannerisms. Some gender identities are 'woman', 'man' but there are many more. Since gender identity is internal it is not necessarily visible to others.

Gender marker refers to the identifier which classifies persons within a particular sex category.

Gender variant describes a person whose gender expression differs from stereotypical expectations and to varying degrees does not conform to gender-based norms and expectations of society.

Intersex refers to persons who cannot be classified according to the medical norms of so-called male and female bodies with regard to their chromosomal, gonadal or anatomical sex. The latter becomes evident, for example, in secondary sex characteristics such as muscle mass, hair distribution and stature, or primary sex characteristics such as the inner and outer genitalia and/or the chromosomal and hormonal structure.

LGBTIQ refers to lesbian, gay, bisexual, trans, intersex and gender queer. Although all of the different identities within ‘LGBTIQ’ are often grouped together, there are specific needs and concerns related to each individual identity.

Prison refers to the Corradino Correctional Facility, any juvenile correctional facility or any other facility in Malta, falling under the responsibility of the Correctional Services where inmates are held in custody or detention or confinement.

Sex refers to a medical term designating a certain combination of gonads, chromosomes, external gender organs, secondary sex characteristics and hormonal balances. Common terms are ‘male’, ‘female’ and ‘intersex’.

Sex characteristics refers to the chromosomal, gonadal and anatomical features of a person, which include primary characteristics such as reproductive organs and genitalia and/or in chromosomal structures and hormones and secondary characteristics such as muscle mass, hair distribution, breasts and stature.

Trans refers to people (sometimes referred to as ‘transgender’) whose psychological self (‘gender identity’) differs from the social expectations for the physical sex they were assigned at birth. ‘Trans’ is also an umbrella term for transgender, transsexual, cross-dressers, gender queer, gender fluid, and people who identify as neither female nor male. Trans does not refer to a sexual orientation, and trans people may have any sexual orientation. It is important to acknowledge that while some people may fit under this definition of trans, they may not identify as such.

Transition refers to a complex, multi-step process that can take years in which a trans person aligns their anatomy and their gender expression with their gender identity. They go from living and identifying as one gender to living and identifying as another.

3 POLICY KEY PRINCIPLES

3.1 Entry and Registration

On admission to CCF an inmate is registered according to the official documents (birth certificate or identity card / passport or any other official identity document).

When an inmate expressly states that one's gender identity, gender expression and/or sex characteristics do not match with the ones that are recorded on the birth certificate, then the Director must be immediately contacted.

In order to determine the correct name and gender pronoun which should be used when addressing the inmate, the Director should sensitively ask the inmate to clarify in private:

- How they self-identify their gender;
- Which gender they are currently living in and whether this is different from the gender they were originally assigned at birth;
- If they have transitioned to start living in a different gender from that assigned at birth; and
- Have they changed their name, title and/or legal gender on the birth certificate, and if not, whether they intend to.

3.2 Allocation

According to the Prison Regulations – where any prison is used for both men and women, separate places or buildings or parts of a building shall be used for men and for women respectively so as to prevent the one category of inmates from seeing or communicating with the other category.

In the case of trans, gender variant or intersex inmates these are allocated to a division or section according to their Birth Certificate, Identity Card, Passport or an official identity document in order to ensure their safety and well-being.

The accommodation provided must reflect the gender marker on the inmate's birth certificate or other official identity document or sworn declaration as per above. . The individual circumstances of the inmate's accommodation with respect to division and cell-sharing suitability need to be reviewed. Any need for a single cell due to an inmate's gender identity, gender expression and/or sex characteristics must be assessed, recorded and addressed as a priority. Restrictions to association with other inmates should be avoided wherever possible. If any restriction to association is required due to the behaviour, emotional condition or vulnerability of the person either one of the following would be appropriate:

- Accommodation in a specified part of the prison;
- Accommodation separate from other inmates; and
- Confining the inmate to their own cell.

When housed in a separate division, trans, gender variant and intersex inmates should still be allowed to participate in activities with other inmates in accordance with their gender identity.

Where the inmate is permanently living in their new gender instead of the gender they were assigned at birth, then establishment allocation should be the new gender in which they are living as per gender marker or official identification document.

A trans inmate may initially be accommodated in separate facilities for no longer than seven days to enable better assessment of how to manage their safety in mainstream accommodation.

A trans, gender variant and/or intersex inmate who is not in a division belonging to their claimed gender identity should, wherever possible, be placed in single cell accommodation unless the Director, after the inmate is professionally assessed deems that a shared cell is sufficiently safe and provides sufficient privacy for both the trans, gender variant and/or intersex inmate and the other inmate/s. The shared cell accommodation shall be restricted by a decision taken on grounds of public policy, public security or public health.

A female-to-male trans inmate living as a man should be allocated to a male establishment as per gender marker. However, if he requests to be allocated to a female establishment due to high level of concern about sexual assault risk in a male establishment, then he should be kept out of association until the Director in consultation with CCF Professional Support Services responds in detail to his request.

A male-to-female inmate living as a woman should be allocated to a female establishment as per gender marker. She should not be automatically regarded as posing a high sexual offence risk to other inmates and should not be subject to any automatic restrictions of her association with other inmates. The Director reserves the right to assign a different allocation if there is clear evidence that the inmate may pose a risk of abuse or be subjected to abuse.

3.3 Name, Title and/or Pronouns

Professionalism, respect and sensitivity should be maintained at all times. The inmate's self-declared gender identity and corresponding name, title and/or pronouns must be respected irrespective of a person's legal gender, as a form of reasonable accommodation in line with national and European legislation.

The name, title and/or pronouns used by the inmate should be used in all verbal communication with and about the inmate, even where these do not correspond with the details recorded on the warrant.

Correctional Services staff should respect the inmate's gender identity and must avoid discussing the inmate's situation in front of other inmates.

Generally, when contacting third parties the prison staff should use the inmate's preferred name, title and/or pronoun corresponding to the inmate's gender identity unless the inmate has specified otherwise or legal requirements impede this.

Any intentional or persistent refusal to respect an inmate's gender identity is a violation of this policy.

An inmate's self-declared name, title and/or pronoun do not by themselves provide the inmate any additional rights. Nonetheless, when an inmate adopts a name, title and/or pronoun that mismatches their gender marker, they must be made aware of the legal gender recognition procedures available in Maltese law and how they can accede to them.

3.4 Rubdowns and Searches

Rubdowns and body searches should be conducted in accordance with the inmate's gender marker, rather than their sex characteristics (primary or secondary). Searches on inmates may be monitored by a Senior Correctional Officer.

For some prison staff, rubdowns and body searches can be one of the most emotive and difficult aspects of dealing with trans, gender variant and intersex inmates. Nonetheless, all inmates must be searched in accordance with this policy, Prison Regulations and security standards. Any staff concerns about performing searches on trans, gender variant and/or intersex inmates should be initially addressed through the provision of additional staff training and information about human diversity, gender identity, gender expression and sex characteristics as well as equality obligations.

Prison inmates should comply with the body search procedures and should be reported by officers if they refuse to submit themselves to such searches. Any provocative, disruptive or offensive language or behaviour by an inmate towards Correctional Services staff during searching can be addressed as per any other inmate's violation of establishment rules.

The primary sex characteristics of a trans inmate must not be used to determine which gender of Correctional Officer should search them. There is no legal requirement for a trans person to undergo any surgery as part of their gender identity recognition, and their decision not to undergo any or certain surgeries does not render them less male or female. Trans inmates who have accessed gender identity recognition procedures and are in possession of official documents reflecting their self-determined gender identity should be searched by a member of staff of the same gender irrespective of their sex characteristics.

If an inmate has recently undergone genital surgery or has on-going physical complications from such surgery, then specialist medical guidance should be sought on how to avoid harm to the inmate during searching.

Any physical variation encountered during searching should be responded to in a similar professional and respectful manner as per any physical variation encountered during searching (example; disability related variations).

During the body search process the inmate should be sensitively asked to remove any items in order to enable the skin underneath to be seen. The items removed must be searched to ensure they have not been tampered with. Care should be taken to avoid accidental damage. The items must be returned immediately once they have been searched. Sufficient time must be provided for the inmate to replace the items and a mirror provided if required.

3.5 Shower and Changing Facilities

The safety and possible enhanced privacy requirements of trans, gender variant and intersex inmates, and also of the other persons in their section/division, should be taken into account when organising and supporting the inmate to shower and change. This may entail establishing separate times for access to such facilities.

3.6 Gender-Based Activities, Rules, Policies and Practices

As a general matter, prisons and other relevant authorities should evaluate all gender-segregated facilities, activities, rules, policies, and practices to ensure that they are in conformity with gender equality legislation, national gender mainstreaming policies, and the Gender Identity, Gender Expression and Sex Characteristics Act. This includes any dress codes, learning activities, work opportunities, leisure, cultural and sport activities, access to barbers/hairdressers, etc.

3.7 Prison Documentation and Information Sharing

The prison shall maintain a mandatory permanent inmate record that includes an inmate's legal name and, where assigned, the legal gender (as listed on the identity document such as the birth certificate, official identification document or passport). However, to the extent that the prison is not legally required to use an inmate's legal name and gender on other prison records or documents, the prison shall use the name and pronoun that is congruent with the social gender of the inmate.

The prison will change an inmate's official record to reflect a change in legal name or gender upon receipt of documentation that such change has been made. In situations where Correctional Services staff is required by law to use or to report a trans, gender variant and/or intersex inmate's legal name or gender, prison staff shall adopt practices to avoid the inadvertent disclosure of such confidential information.

An inmate who has changed their legal gender may also request the prison to re-issue or exchange any official document or certificate relative to them according to their new name and gender.

Information about a trans inmate's gender identity must be handled very carefully and in full compliance with data protection and medical confidentiality standards because it is highly sensitive information with serious potential safety and security consequences. It is particularly important that it is not disclosed by Correctional Services Staff either deliberately or accidentally to other inmates.

Information about an inmate's gender identity may only be shared between service providers where this is a fair and proportionate way to achieve the legitimate aims of ensuring the safety and dignity of the inmate, the safe operation of the service more generally and/or to aid the prevention or investigation of crime.

If an inmate has obtained legal gender recognition, thus rectifying their gender marker on the birth certificate, it is a criminal offence to share information about their gender history without legitimate cause and/or without their permission. Where the purpose of the information sharing is for risk assessment then the sharing of anonymised information can be carried out to enable risk assessment in situations where there is no prevention of crime rationale.

Where the inmate is accessing other service providers such as Health or Drug Rehab Services, Professional Support Services should be convened to explore the specifics of how the inmate will be accommodated and the information that may need to be shared in order to ascertain the following:

- Respect for and dignity of the trans, gender variant and intersex inmate;
- The inmate's mental health and well being;
- The inmate's social integration; and
- The safety of the inmate and other people they might come into contact with.

Where the inmate is being transported between facilities, service providers and/or courts, gender identity, gender expression and/or sex characteristics information should usually be limited to:

- The current name, title and gender pronoun used by the inmate;
- The current gender of staff that should search the inmate;
- Any medication or additional gendered property in use which the inmate needs access to during transportation (medication which is not needed during the; transportation period does not need to be notified to the escort provider); and
- The extent to which the inmate needs protection from other inmates during transportation.

3.8 Clothing and Access to Additional Gendered Property in Use

Trans, gender variant and intersex inmates may require access to items which may not be traditionally associated with their social gender role or readily available in a particular division. Suitable access to such items or services which are necessary to support their gender identity, gender expression and/or sex characteristics should be provided to all trans, gender variant and intersex inmates regardless of which division they have been allocated to.

Access to this gender specific or additional property in use should not be viewed as 'special' treatment. It is more appropriately viewed as a form of reasonable accommodation. Many of the items count as medical equipment.

Only in exceptional circumstances, such as when an acute suicide or self-harm risk has been identified can any temporary restriction be applied to unsupervised access to gender identity and gender expression related additional property in use. Even where suicide or self-harm risk temporarily prevents unsupervised access to certain gender identity and gender expression medical equipment, access should still be provided for periods of association with other inmates and while supervised by staff.

Additional property in use items should be reviewed and agreed at the trans, gender variant and intersex inmate's case management conferences in consultation with any medical specialist, the representative of the healthcare team and the inmate. It is important to note that the items required may change over time.

Some examples of possible additional gendered property which may be needed are set out below but this list should not be considered to be exhaustive:

- Clothing (including underwear) in accordance with the inmate's gender identity and/or gender expression;
- Sanitary wear;
- Shaving equipment and cream;
- Hair removal cream;
- Cosmetics;
- Binder for breasts;
- Prosthetics such as breast or genital forms (subject to prescription by a professional officer); and
- Vaginal dilators (subject to prescription by a professional officer).

Access to additional gendered property in use should be guaranteed to inmates regardless of their legal gender identity.

3.9 Access to Gender Identity Recognition while in Custody

Inmates have the right to access gender recognition procedures while in custody. Where inmates already in custody make a request for assistance or inform that they are considering accessing gender recognition procedures, then this must be taken seriously. Any member of staff receiving such a request from an inmate already in custody must inform the Director. If the inmate is judged to be in acute need of emotional support or at risk of self-harm or suicide appropriate care and intervention should be taken. The safety of the inmate may also be at risk due to reactions of other inmates to their transition.

The Correctional Services should urgently provide the inmate with the opportunity to discuss in private, with the appropriate staff member, away from other inmates:

- How they self-identify their gender;
- How they are feeling and any concerns about their current and future safety, dignity and privacy;
- Whether they have told any other inmates about how they feel and, if so, were the reactions supportive or hostile;
- Any initial thoughts they have about their needs regarding gender-related additional property in use. (The inmate should be advised that any decisions about possible provision of additional property in use may need to be taken following assessment by CCF Professional Services); and
- Any initial thoughts they have about the possibility of gender identity recognition, such as whether they are considering changing their name, gender and/or seeking access to medical gender reassignment services.

The information provided by the inmate during this initial discussion should be recorded and used by the relevant personnel as part of conducting any urgent risk assessment to take place within seven days of the inmate's request for assistance.

The CCF Professional Services will review any necessary intervention, assistance, information or support that needs to be provided. It will also recommend to the Director the allocation of the inmate to the appropriate division or section and ensure a safe and secure environment for the trans inmate. The prison will also communicate with prison staff to inform them regarding names and pronouns to be used following transition. Correctional Services records will need to be amended to reflect the new details as will any new reports.

The Correctional Services should also make resources available to inmates who have additional questions or concerns including possible referral to community-based LGBTIQ organisations and other specialised services to provide appropriate support to the inmate. The inmate is responsible for meeting the costs related to gender identity recognition procedures.

Any inmate, saving the limitations established in the Gender Identity, Gender Expression and Sex Characteristics Act in relation to nationality, residency, citizenship and status, has the right to change their name, title, legal gender at any time regardless of whether or not they have undergone any medical or surgical procedures.

3.10 Access to Health Services

Trans, gender variant and intersex inmates have the right to access medical assessment and treatment related to their gender identity, gender expression and/or sex characteristics. Any hormone medication (such as hormone tablets, injections and topical gels) an inmate is already receiving on prescription prior to imprisonment should be identified, recorded within the inmate's healthcare records and access continued in the same manner as any other prescribed medication would be continued within prison.

Access to hormones, hair removal, speech therapy or surgery as part of a process of transition while in prison should be taken in consultation with doctors (specialised in the fields of gender reassignment, endocrinology and/or surgery) applying the same principles as would be applied in relation to people at liberty.

The fact of a trans, gender variant and intersex person's imprisonment, and the vulnerable situation in which that places them, means that every effort should be made by Correctional Services to ensure access to the required/requested medical treatment that assists the inmates in aligning their physical characteristics with their gender identity. Whenever an inmate requests such specialist assistance, the necessary arrangements to facilitate this should be undertaken promptly.

Access to trans, gender variant and/or intersex healthcare services should be guaranteed to inmates regardless of their legal gender identity.

3.11 Access to Social Contact and Support for Mental Health

Inmates have a right to adequate positive social contact to support mental health and wellbeing and as stated in Article 50 of the Prison Regulations inmates shall be encouraged as much as possible to establish and maintain such relations with their friends or relatives as are desirable in the best interests of both, as well as such relations with persons and organisations outside prison as may best promote the interests of the inmates' families and the inmates' own social rehabilitation.

Trans, gender variant and intersex inmates have the right to receive visits from friends or relatives without discrimination or harassment on grounds of gender identity, gender expression and/or sex characteristics from staff or other inmates.

The risk of depression, anxiety, self-harm and suicide is higher among the trans, gender variant and intersex population than the general population. Correctional Services must establish the level of risk and current needs for the individual inmate and where mental health concerns are identified these should be addressed as a priority.

Trans, gender variant and intersex inmates should be provided with information on community organisations that can provide expert knowledge, information and support and the means to get in touch with them should they so choose.

3.12 Assignment of Correctional Officers

The Director Correctional Services will assign Correctional Officers to Divisions or Sections where trans, gender variant and intersex inmates may be allocated as needed.

An approach based on care and security of inmates will be the main criterion that will determine whether correctional officers will be assigned to work in such divisions.

4 Training

The Director Correctional Services shall ensure that training is given to all staff members on their responsibilities under applicable laws and this policy, including Correctional Officers, Prison Management and administration teams, counsellors, social workers, educators and health staff. Information regarding this policy shall be incorporated into training for new prison employees.

The Director Correctional Services shall implement ongoing professional development to build the skills of all staff members to prevent, identify and respond to bullying, harassment and discrimination on the grounds of sex, sexual orientation, gender identity, gender expression and sex characteristics. The content of such professional development shall include, but not be limited to:

- a. Terms, concepts, and current developmental understandings of sex, sexual orientation, gender identity, gender expression, and sex characteristics;
- b. Appropriate strategies for communication with inmates about issues related to gender identity, gender expression and sex characteristics that protect the inmate's privacy;
- c. Appropriate strategies for ensuring the safety and security of trans, gender variant and intersex inmates;
- d. Prison policies regarding bullying, discrimination, gender identity, gender expression and sex characteristics issues together with responsibilities of staff.

Training may involve external trainers with the required expertise in the field of gender identity, gender expression and sex characteristics.

Trainers may recommend to the Director Correctional Services that members of staff whose attitudes towards trans, gender variant and intersex inmates are judged not to be in line with the provisions of this policy for further training;

Without prejudice to the provisions on disciplinary action in this policy or under general prison rules or procedures, where an officer is determined to have been guilty of harassing, bullying or abusing a trans, gender variant and/or intersex person, they shall receive additional training in this regard.

References:

Scottish Prison Service Gender Identity and Gender Reassignment Policy for those in our Custody (2014)